IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

MISC. CIVIL APPLICATION NO. 53 OF 2004

Smt. Archana Vijay Borde ... Applicant

V/s

Shri Vijay Vithalrao Borde ... Respondent

Shri Pankaj Bhatt for the applicant.

None for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 24TH SEPT., 2004.

P.C.:

1. Heard learned advocate for the applicant. None present for the respondent though duly served as per office endorsement dated 31.8.2004.

2. Rule. Rule made returnable forthwith.

3. This is an application under Sec. 24 of the Civil Procedure Code for transfer of Petition No.A-482 of 2003 filed by the respondent in Family Court at Aurangabad to the Court of Civil Judge, Sr. Divn., Thane. The said proceeding is for restitution of the conjugal rights.

It is submitted on behalf of the applicant that she has problem of motion sickness, encountered serious health problems occasionally in the course of travel and she would not be in a position to travel to Aurangabad time and again to attend the said proceeding. It is further submitted that she is pursuing her studies at Navi Mumbai and, therefore, her study would be interruped by frequent travels. She has also filed proceeding to obtain maintenance under Sec. 125 of the Cr. P.C. at Navi Mumbai. According to her, there was an attempt on her life at Aurangabad and, therefore, she is afraid for her life if she goes to attend the Court matter at Aurangabad as his father is employed and is not in a position to escord on every occasion. Under such circumstances the plea for transfer is made.

4. Respondent though duly served is not present and, therefore, the entire allegations made by the applicant remained unchallenged. Moreover, it cannot be overlooked that the respondent would be required to travel to Navi Mumbai in order to attend the maintenance proceeding filed by the applicant and, therefore, it would be in the fitness of things if the Aurangabad matter is transferred to the Civil Court at Thane with appropriate directions to the lower Court to fix the

matter peremptorily for hearing so as to avoid unnecessary delay in adjudication of both proceedings. Hence the following order :-

O R D E R

The application is allowed in terms of prayer clauses (a) and (b).

Petition No. A-482 of 2003 filed by the respondent in the Family Court at Aurangabad stands transferred to the Court of Civil Judge, Sr. Divn., at Thane.

The Family Court Judge, Aurangabad, is directed to transmit the entire proceeding to the Civil Court, Thane.

The Civil Judge, Sr. Divn., Civil Court at Thane is directed to expedite the hearing of the matter and shall fix the peremptory dates of hearing after giving notice to both sides of the dates so fixed for hearing.

With these directions, the application stands disposed of with no order as to costs.

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